United States District Court
For the Northern District of California

FILED

FEB 15 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Lumont Otis)
Petitioner)
v.)
United States of America,)
Respondent.)

No. C 09-0595-DLJ
C 10-4302
(Appeal No. 11-17761)

ORDER

Petitioner Lumont Otis ("Otis") was charged with being a felon in possession of a firearm or ammunition in violation of 18 U.S.C § 922(g). On October 23, 2009, Otis pled guilty pursuant to a plea agreement to a single count of possession of ammunition. He was sentenced by this Court on January 22, 2010. Otis filed a petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 alleging ineffective assistance of counsel. On October 11, 2011 this Court issued an order denying Otis' 2255 motion.

On October 24, 2011, Otis filed in this court a Notice of Intent to Appeal the October 11, 2011 Order to the Ninth Circuit. On November 17, 2011 the Ninth Circuit assigned appellate case number 11-17761 to Otis' case pending a issuance of a Certificate of Appealability by this Court.

On January 23, 2011 the Ninth Circuit issued a limited remand to this Court for the purpose of the Court granting or denying a Certificate of Appealability. Apparently in response to the January 23 Ninth Circuit order, on February 3, 2012 Otis filed in this Court a "Motion to Correct Clerical Error."[1]

---

[1] Otis also filed a pleading directly with the Ninth Circuit on that date.

This filing states that Otis had intended his filing not to be construed as an appeal to the Ninth Circuit, but rather as a Request for Reconsideration by this Court. He further requests that the Ninth Circuit hold his appeal in abeyance pending the outcome of his request for reconsideration.

Currently the Ninth Circuit has jurisdiction over this matter generally. This Court has jurisdiction only as to the limited issue of whether to issue a certificate of appealability. The Ninth Circuit would only stay the appeal and remand this case to the District Court were the District Court to indicate that it would entertain the Request For Reconsideration. See Federal Rule Of Appellate Procedure 12.1(b)(prior to remand, the Circuit requires an "Indicative Ruling" stating that the District Court would grant the motion for reconsideration or that the motion raises a substantial issue).

Otis has not made a formal request to this Court for an Indicative Ruling. However, the Court may make an Indicative Ruling *sua sponte*. This Court finds that it would not grant a motion by Otis requesting reconsideration. Therefore, no remand of this matter for that purpose need happen.

The only remaining issue for this Court therefore is the grant or denial of a Certificate of Appealability, which issue the Court will rule on separately.

United States District Court
For the Northern District of California

IT IS SO ORDERED.

Dated: February 9, 2012

D. Lowell Jensen
United States District Judge